

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

| | | |
|---------------------------------|---|------------------------------|
| JOHN KNIGHT, DONNA RUSSELL) |) | |
| KNIGHT d/b/a THE GLASS EYE) |) | |
| GALLERY, CHARLES COLE, VIIU) |) | |
| NIILER, COUNTRY GLASS SHOP,) |) | |
| AUNT SADIE'S, INC., AND SUSAN) |) | |
| BOERMAN,) |) | |
| |) | |
| Plaintiffs,) |) | Case No. 04 12698 JLT |
| |) | |
| v.) |) | |
| |) | |
| CHRISTMAS TREE SHOPS, INC.,) |) | |
| |) | |
| Defendant.) |) | |
| |) | |

AFFIDAVIT OF CARRIE KEI HEIM

I, Carrie Kei Heim, do hereby depose and say under oath as follows:

1. I am an attorney with the firm of Mintz Levin Cohn Ferris Glovsky & Popeo, PC, counsel for the defendant, Christmas Tree Shops, Inc. ("CTS"). I am familiar with the facts in, and procedural history of, the above-captioned action and am submitting this Affidavit and the exhibits attached hereto in support of Christmas Tree Shops, Inc.'s Motion to Strike the Survey and Report of Plaintiffs John Knight and Donna Russell Knight.

2. Attached to this Affidavit at Exhibit A is a true and accurate copy of an e-mail from plaintiffs' counsel.

3. Attached to this Affidavit at Exhibit B are true and accurate copies of the thirty (30) survey responses received from plaintiffs.

4. Attached to this Affidavit at Exhibit C is a true and accurate copy of the "Report of Survey of Glass Eye Customers."

Signed, under the pains and penalties of perjury, this 15th day of May, 2006.

/s/ Carrie Kei Heim
Carrie Kei Heim

Heim, Carrie Kei

From: Joel Joseph [joeldjoseph@gmail.com]
Sent: Monday, April 10, 2006 11:02 AM
To: Heim, Carrie Kei
Subject: Re: FW: Survey

John Knight conducted the survey. The surveys were mailed the beginning of March and all of those considered in the report were received by March 31st. Mr. Knight prepared the report. We are mailing the 30 responses today.

Joel D. Joseph

On 4/3/06, **Heim, Carrie Kei** <ckheim@mintz.com> wrote:

Joel,

To follow up on our recent e-mail below, please provide the following methodological information regarding the Report of Survey of Glass Eye Customers, dated March 31, 2006:

- 1) Who authored and conducted the survey
- 2) When the survey was conducted (dates the surveys were mailed & received)
- 3) A copy of the survey questionnaire as sent to the customer-participants
- 4) Copies of any additional information sent to the customer-participants in conjunction with or in anticipation of the survey (cover letter, etc.)
- 5) Copies of the 30 responses received (we will pay for reasonable copying costs)
- 6) Who tabulated the responses and prepared the report

This information is critical to a correct understanding of the report. As we are now working towards the deadline for providing our motion for summary judgment to the Court, we request that these documents be provided to us no later than next Monday, April 10th. If you have any objections, we invite you to call us to confer, pursuant to Local Rule 7.1, prior to April 10th. If we have not heard from you or received the requested materials by that date, we will file a motion to compel.

Thank you,
Carrie

From: Biagetti, Peter
Sent: Friday, March 31, 2006 2:42 PM
To: 'Joel Joseph'
Cc: 'Kenneth.Bradley@bedbath.com'; Heim, Carrie Kei
Subject: RE: Survey

Thanks, but please note our objection to any supplementation of any survey results anytime after today. The Court made clear that today was the deadline so that we could keep the schedule toward summary judgment moving. Toward that end, please identify for us who conducted the survey, when it was conducted, and

who wrote the report.

Peter A. Biagetti | Attorney
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center | Boston, MA 02111
Phone: 617.348.4472 | Fax: 617.542.2241
Cell: 508.277.6945
E-mail: pbiagetti@mintz.com
Web: www.mintz.com

From: Joel Joseph [mailto:joeldjoseph@gmail.com]
Sent: Friday, March 31, 2006 1:08 PM
To: Biagetti, Peter; Kenneth.Bradley@bedbath.com
Subject: Survey

The survey report is attached.

IRS CIRCULAR 230 NOTICE

In compliance with IRS requirements, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties or in connection with marketing or promotional materials.

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began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? _____

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE 041

began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year?

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) Mark Ahrens

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE 042

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In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

---Survey---

Have you ever shopped at a Christmas Tree Shop? yes no
About how many times can you recall shopping at a Christmas Tree Shop last year? ?
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no
I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce. _____

Comments: They looked the same in size. The finish was different

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE 043

"... Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 0

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Judy Canna

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

66044

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began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes _____ no

About how many times can you recall shopping at a Christmas Tree Shop last year? 3

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes _____ no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes _____ no

If confused, was it because the two sconces were so similar? yes _____ no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes _____ no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes _____ no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) 

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE045

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In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? EVERY WEEK

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no
I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) Ruth Mc Kenna

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE046

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began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 3

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) J. P. French III

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE 047

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 10 *

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Susan Cochran

Thank you for taking the time to respond to this survey.

Donna and John Knight

GE048

began proceeding a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 30+

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree

Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

6E049

began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no
About how many times can you recall shopping at a Christmas Tree Shop last year? _____
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you confused about who produced the sconce found at The Christmas Tree
Shops? yes no

If confused, was it because the two sconces were so similar? yes no
I thought The Glass Eye must have sold their design and / or sconces to The Christmas
Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE050

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 20

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree

Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Sarah E-W, lcaf

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE O 51

began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 4
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you confused about who produced the sconce found at The Christmas Tree

Shops? yes no

If confused, was it because the two sconces were so similar? yes no
I thought The Glass Eye must have sold their design and / or sconces to The Christmas

Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Jeanne Eberle

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GEO 52

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce exclusively for sale in their gallery. In 2003 they brought suit against The Christmas Tree Shops for coping their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to the following. A return envelope is enclosed.

Have you ever shopped at a Christmas Tree Shop? yes no

How many times can you recall shopping in a Christmas Tree Shop last year? 10X

Are you familiar with The Glass Eye wall sconce? yes no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you at all confused about the source of the sconce at The Christmas Tree

Shop? yes no

Please check those which you feel apply:

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops.

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

I was not confused. The difference in quality was apparent even though the design was similar.

I never saw The Christmas Tree Shop's sconce.

Comments:

Name (Optional) Donna & John

Thank you, Donna and John

GE 053

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce exclusively for sale in their gallery. In 2003 they brought suit against The Christmas Tree Shops for coping their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to the following. A return envelope is enclosed.

Have you ever shopped at a Christmas Tree Shop? yes _____ no
How many times can you recall shopping in a Christmas Tree Shop last year? MNY
Are you familiar with The Glass Eye wall sconce? yes _____ no
Have you seen a similar looking sconce in The Christmas Tree Shop? yes _____ no
Were you at all confused about the source of the sconce at The Christmas Tree Shop? _____ yes _____ no

Please check those which you feel apply:

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops.
 I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 I was not confused. The difference in quality was apparent even though the design was similar.
 I never saw The Christmas Tree Shop's sconce.

Comments:

Name (Optional)

LURIE Sexton

Thank you, Donna and John

6G-054

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce exclusively for sale in their gallery. In 2003 they brought suit against The Christmas Tree Shops for coping their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to the following. A return envelope is enclosed.

Have you ever shopped at a Christmas Tree Shop? yes no
How many times can you recall shopping in a Christmas Tree Shop last year? 50 - 60
Are you familiar with The Glass Eye wall sconce? yes no
Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you at all confused about the source of the sconce at The Christmas Tree
Shop? yes no

Please check those which you feel apply:

I thought The Glass Eye must have sold their design and / or sconces to The
Christmas Tree Shops.
 I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 I was not confused. The difference in quality was apparent even though the design
was similar.
 I never saw The Christmas Tree Shop's sconce.

Comments:

Name (Optional) Nancy Sifone

Thank you, Donna and John

GEO 55

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 50+

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce.

Comments: *My husband and I knew that John Knight did not make the sconces OR would EVER sell his design for manufacture in China !! The design was stolen, I'm sure*

Name (optional) Judith H Buffington

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

GE056

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce exclusively for sale in their gallery. In 2003 they brought suit against The Christmas Tree Shops for coping their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to the following. A return envelope is enclosed.

Have you ever shopped at a Christmas Tree Shop? yes no
How many times can you recall shopping in a Christmas Tree Shop last year? 25 or so
Are you familiar with The Glass Eye wall sconce? yes no
Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you at all confused about the source of the sconce at The Christmas Tree
Shop? yes no

Please check those which you feel apply:

I thought The Glass Eye must have sold their design and / or sconces to The
Christmas Tree Shops.
 I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 I was not confused. The difference in quality was apparent even though the design
was similar.
 I never saw The Christmas Tree Shop's sconce.

Comments:

Name (Optional)

Linda Antweiler

Thank you, Donna and John

GET 057

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 30 or more
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional)

Rosina Jones

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

18

GE 058

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 40

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Faith J. Casarella

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

19

GE 059

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 6-7

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design. yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

JD

BE 060

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year?

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

21

GE 061

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2002 they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 10 or more
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

22

GE 062

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

---Survey---

Have you ever shopped at a Christmas Tree Shop? yes no
About how many times can you recall shopping at a Christmas Tree Shop last year? 0
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no
Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no N/A

If confused, was it because the two sconces were so similar? yes no N/A
I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no N/A

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no N/A

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) John Knight

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

23

GC 063

III 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003 they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

---Survey---

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? 8 or more
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional) Rid

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

24

GE 064

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes / no

About how many times can you recall shopping at a Christmas Tree Shop last year?

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes

no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes / no

Were you confused about who produced the sconce found at The Christmas Tree

Shops? yes / no

If confused, was it because the two sconces were so similar? yes / no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes / no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes / no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

25

GT 065

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. Page 26 they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? once twice three times more than three times

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

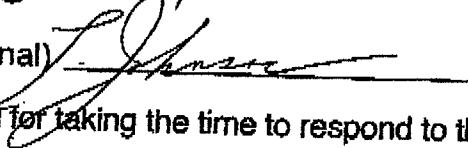
I thought The Christmas Tree Shops must have copied The Glass Eye's design. yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

No comparison

Name (optional)



Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

26

GC 066

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year?

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional) _____

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

27

GE 067

In 1992, Donna and John Knight or The Glass Eye Gallery and Studio designed and began ~~producing~~^{marketing} a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year? _____

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional)

Janeen White

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

28

GE 068

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2002, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no

About how many times can you recall shopping at a Christmas Tree Shop last year?

Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no

I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.
 yes no

I never saw The Christmas Tree Shops sconce.

Comments:

Name (optional)

Monique Bolduc

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

29

68069

In 1992, Donna and John Knight of The Glass Eye Gallery and Studio designed and began producing a triangular wall sconce for sale exclusively in their gallery. In 2003, they brought suit against The Christmas Tree Shops for copying their design, having it reproduced in China, and marketing it through their stores.

We would appreciate your response to this survey. A return envelope is enclosed for your convenience.

—Survey—

Have you ever shopped at a Christmas Tree Shop? yes no
About how many times can you recall shopping at a Christmas Tree Shop last year? too many
Are you familiar with The Glass Eye wall sconce made for holding dried flowers? yes
 no

Have you seen a similar looking sconce in The Christmas Tree Shop? yes no

Were you confused about who produced the sconce found at The Christmas Tree Shops? yes no

If confused, was it because the two sconces were so similar? yes no
I thought The Glass Eye must have sold their design and / or sconces to The Christmas Tree Shops. yes no

I thought The Christmas Tree Shops must have copied The Glass Eye's design.

yes no

I never saw The Christmas Tree Shops sconce. _____

Comments:

Name (optional)

M. Scott Reed

Thank you for taking the time to respond to this survey.

Donna and John Knight
The Glass Eye Gallery and Studio

30

GC 070

Report of Survey of Glass Eye Customers

March 31, 2006

Survey Questions

The survey questions were as follows:

1. Have you ever shopped at a Christmas Tree Shop?
2. About how many times have you shopped at a Christmas Tree Shop last year?
3. Are you familiar with The Glass Eye wall sconce made for holding dried flowers?
4. Have you ever seen a similar-looking sconce at the Christmas Tree Shop?
5. Were you confused about who produced the sconce found at the Christmas Tree Shop?
6. If confused, was it because the two sconces were so similar?
7. Did you think that The Glass Eye must have sold their design and/or sconces to the Christmas Tree Shops?

Survey Universe

The surveys were sent by mail to 148 customers of the Glass Eye. The list was based on customers of during the month of October, 2004.

Survey Responses and Results

To date, 30 responses have been received. This represents a response rate of 20.3%. Additional responses will be retained, tabulated and made available to the defendant.

Twenty-five out of the 30 responses indicated that they shop at Christmas Tree Shops. This means that 83.33 percent of the respondents shop at both Christmas Tree Shops and The Glass Eye, a very significant overlapping of customers.

According to those who have shopped at the Christmas Tree Shops, these customers made a total of 413.5 trips to Christmas Tree Shops during the past year. (The 0.5 total occurred because when a response stated that the customer had been to the Christmas Tree Shops 6-7 times, the response was marked as 6.5 visits). Based on the 25 customers who visited Christmas Tree Shops, they shopped at CTS an average of 16.54 times during the past year. These are regular Christmas Tree Shops customers, visiting the store more than once per month on average.

Twenty-eight of the 30 respondents stated that they were familiar with The Glass Eye wall sconce. This represents 93.33 percent. This group is therefore not only very familiar with The Glass Eye's products, but they also are regular Christmas Tree Shops customers.

Of the 25 respondents who shop at Christmas Tree Shops, 19 noticed the Christmas Tree Shops wall sconce. This means that 76% of those who shop at Christmas Tree Shops, noticed the wall sconce.

Of those 19 who saw the sconce, 13 stated that they were confused as to the source of the sconce. This represents 68.4% of those who noticed the wall

sconce. In other words, 68.4% of those customers who saw the Christmas Tree Shops wall sconce were confused as to the source of the sconce.

Eleven of the 13 (84.6%) who were confused noted that similarity between the sconces as one source for this confusion. Three of the 13 (23%) thought that The Glass Eye had either sold the sconce or the design to Christmas Tree Shops.

Fifteen of those 19 (78.9%) who saw the sconce at Christmas Tree Shops believed that Christmas Tree Shops had copied the sconce from The Glass Eye.

Conclusions

The Glass Eye is known for its wall sconce. When its customers see the sconce, or one very similar to it, they believe the source of the sconce is The Glass Eye. The Glass Eye wall sconce has achieved secondary meaning.

Further, the survey demonstrated that The Glass Eye's customers and Christmas Tree Shops customers overlap considerably.

Finally, the survey demonstrates customer confusion about the source of the wall sconces sold at Christmas Tree Shops.